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CSMS# 13-000298 - Initiation Date for Liquidated Damages for ISF Non-Compliance

U.S. Customs and Border Protection sent this bulletin at 06/07/2013 09:05 AM EDT

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CSMS# 13-000298 - Initiation Date for Liquidated Damages for ISF Non-Compliance

06/07/2013 10:04 AM EDT

Ocean Manifest

In order to achieve the most compliance with the least disruption to the trade and to domestic port operations, CBP has been applying a measured and commonsense approach to Importer Security Filing (ISF or 10+2) enforcement. On July 9, 2013 CBP will begin full enforcement of ISF, and will start issuing liquidated damages against ISF importers and carriers for ISF non-compliance.

Please visit http://www.cbp.gov/xp/cgov/trade/cargo_security/carriers/security_filing for more information and send questions to security_filing_general@cbp.dhs.gov.

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CBP Enters Next Phase of Importer Security Filing

Release Date: Fri, 06/07/2013 - 12:00

WASHINGTON, D.C.—U.S. Customs and Border Protection is making preparations to enter into the liquidated damages phase of the Importer Security Filing (ISF) enforcement process, which takes effect next month.

"The Importer Security Filing and Additional Carrier Requirements are part of CBP's layered enforcement strategy," said Acting Commissioner Thomas S. Winkowski. "CBP works collaboratively and collectively with the other agencies and the trade to maintain the highest level of security and safety for our nation while facilitating legitimate trade."

CBP will begin the liquidated damages phase of ISF enforcement on July 9, 2013, adding to the use of manifest holds and non-intrusive inspections to enforce ISF compliance. In order to achieve maximum compliance with the least amount of disruption to the trade and to domestic port operations, CBP has been applying a measured and commonsense approach to enforcement.

CBP may issue liquidated damages of \$5,000 per violation for the submission of an inaccurate, incomplete or untimely filing. Liquidated damages in simplified terms refer to a penalty secured by a bond. If goods for which an ISF has not been filed arrive in the U.S., CBP may withhold the release or transfer of the cargo. For carrier violations of the vessel stow plan requirement, CBP may refuse to grant a permit to unload for the merchandise. Additionally, noncompliant cargo could be subject to further inspection on arrival.

The ISF and Additional Carrier Requirements were borne out of the Security and Accountability For Every (SAFE) Port Act of 2006 which required the filing of additional advance data elements to help CBP to make earlier and more informed targeting decisions and improve CBP's ability to target high-risk U.S.-bound containerized vessel cargo prior to its arrival in the U.S.

The 10+2 rule was published in the Federal Register on November 25, 2008 and has been in effect since January 26, 2009.

U.S. Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with the management, control and protection of our nation's borders at and between the official ports of entry. CBP is charged with keeping terrorists and terrorist weapons out of the country while enforcing hundreds of U.S. laws.

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**U.S. CUSTOMS & BORDER PROTECTION
TRADE INFORMATION NOTICE**

NUMBER: 13-17
ISSUE DATE: 07-22-13

SUBJECT: Enhanced Enforcement for Non-Compliance of the Importer Security Filing

DISTRIBUTION: Customs Brokers, Filers, Importers, Freight Forwarders, Interested Parties

The purpose of this Trade Information Notice is to notify the Area Port of Seattle importing community of the commencement date for enhanced enforcement for non-compliance of the Importer Security Filing (10+2 or ISF) requirements.

As previously reported and posted on the CBP.gov website on June 7, 2013, U.S. Customs & Border Protection (CBP) has completed preparations to begin the next phase of the Importer Security Filing (ISF) enforcement process. The ISF rules require importers and vessel-operating carriers to provide additional advance trade data on cargo shipments to CBP 24 hours prior to vessel lading, pursuant to Section 302 of the Security and Accountability for Every Port (SAFE Port Act) of 2006.

The Interim Final Ruling (IFR) was officially published in the Federal Register with an effective date of January 26, 2009. The IFR included a 1-year delayed enforcement (informed compliance) period which concluded on January 25, 2010. As of July 9, 2013, the Area Port of Seattle Seaport began enhanced enforcement measures to improve ISF compliance.

Effective immediately: CBP, in all seaports falling under the purview of the Area Port of Seattle, will place holds to address non-compliance with the ISF regulation for shipments departing a foreign port destined for the U.S. CBP will hold all non-compliant ISF cargo shipments at their respective terminal until the required ISF data is filed. Once the ISF data is transmitted and a security assessment is determined, additional enforcement actions including Non-Intrusive Inspection (NII) and/or intrusive examinations may be initiated. CBP may also assess liquidated damages of up to \$5000 per violation as warranted by 19 CFR Part 194. Complying with the ISF rule will prevent costly and untimely delays in cargo processing.

The chart below explains the updated codes:

Code	Name/Disposition	Action
2O	ISF Hold for no ISF on file	Informs the carrier that shipment has a manifest hold.
2P	ISF Hold for ISF Compliance Issue	Informs the carrier that shipment has a manifest hold.
4O	ISF Hold Removed for no ISF on file	Generated to remove the ISF Hold identified in 2O
4P	ISF Hold Removed for ISF Compliance Issue	Generated to remove the ISF Hold identified in 2P



**POR T OF SAN FRANCISCO
INFORMATION NOTICE**

Distribution: All Brokers, Filers, Importers, CBP Officers, Entry Specialists, and Import Specialists
 Number: 782-13-09 Supersedes: Not Applicable
 Issue Date: July 25, 2013 Expires: When Superseded
 Contact Point: ATU Supervisor Wendell Roberts (510) 273-4336 x206

Importer Security Filing (ISF) Enforcement Procedures:

PURPOSE:

The purpose of this Public Bulletin is to notify the Area Port of San Francisco Seaport importing community of the commencement date for enhanced enforcement for non-compliance of the Importer Security Filing (ISF or 10+2) requirements.

BACKGROUD:

As previously posted on the CBP website on June 7, 2013, U.S. Customs and Border Protection (CBP) has completed preparations to begin the next phase of the Importer Security Filing (ISF) enforcement process. The ISF rules require importers and vessel-operating carriers to provide additional advance trade data on cargo shipments to CBP 24-hours prior to vessel lading, pursuant to Section 203 of the Security and Accountability for Every Port (SAFE Port Act) of 2006.

The Interim Final Ruling (IFR) was officially published in the Federal Register with an effective date of January 26, 2009. The IFR included a 1-year delayed enforcement (informed compliance) period which concluded on January 25, 2010. Due to instances of continued non-compliance with ISF requirements, the Oakland Seaport will now apply enhanced enforcement measures to improve ISF compliance.

ACTION:

On July 15, 2013, CBP in Oakland started making use of the newly activated cargo holds in the Automated Cargo Environment (ACE) system to address non-compliance with the ISF rule. CBP will hold all non-compliant ISF shipments at the terminal until the required ISF is filed. Once the ISF data is received and a security assessment is made, additional enforcement actions including Non-Intrusive Inspection (NII) and/or intrusive exams may be initiated. CBP may also assess liquidated damages of up to \$5,000 per violation as warranted. Costly and untimely delays in cargo processing can be avoided through compliance with the ISF rule.

Questions regarding this information notice should be directed to the Oakland Advanced Targeting Team 510-273-4336 x206.

Donald Kusser
 (A)Area Port Director
 San Francisco

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CBP announces start date of Liquidated Damage Charges for ISF (10 + 2) Non-Compliance

Monday, June 17, 2013



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Effective July 9, 2013, US Customs and Border Patrol (CBP) has announced they will begin full enforcement of Importer Security Filing (ISF or 10+2) regulations. The full enforcement will include CBP issuing liquidated damages for ISF (10+2) non-compliance against importers and carriers.

For more information please visit the CBP website

http://www.cbp.gov/xp/cgov/trade/cargo_security/carriers/security_filing/

For your convenience, the actual CBP announcement may be found here

http://apps.cbp.gov/csms/viewmssg.asp?Recid=19434&page=&srch_argv=13-000298&srchtype=all&btype=&sortby=&sby=

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21 Enforcement Of Importer Security Filing Final Rule

JAN '13 Next month could prove to be a big month for importers who ship via ocean into the U.S. The final rule on the Importer Security Filing (ISF) is due to come into effect **February, 2013**.

In January of 2010, the rule titled **Importer Security Filing and Additional Carrier Requirements** (commonly known as "10+2" went into effect. U.S. Customs and Border Protection (CBP) offered varying plans on how they would begin enforcement. At one point they stated that they would use the Interim Final Rule as a "measured approach", and in another statement they said they planned on rolling out enforcement as a "graduated escalated" approach, similar to an informed compliance period. They also offered varying options of enforcement.

[Video: Importer Security Filing "10+2"](#)

How Will The Rule Be Enforced?

Enforcement measures of the ISF requirements include:

- Seizures of non-compliant shipments
- "Do not load" orders
- Delays in the release of cargo

- Withholding the release of cargo
- Liquidated damages in the amount of:
 - \$5,000 per late ISF
 - \$5,000 per inaccurately filed ISF
 - \$5,000 for the first inaccurate ISF update

In the three years since the interim rule took effect we have seen minimal measures taken by CBP in enforcing the ISF filing requirements. There have been delays in the release of cargo, increased x-ray exams, and intensive exams placed on shipments where the ISF filing was late. Most recently we have seen "Do Not Load" orders, but what we have not encountered is the issuing of monetary penalties.

Impact On Importers

For those ocean importers who have been working hard to be compliant under the ISF interim final rule, the impact may be minimal. But for those who have been struggling to comply with this importing requirement, the impact may be far greater.

Importer Responsibilities And Challenges

As the final rule comes into effect next month I suspect that CBP will start to step up enforcement on importers who file ISFs late, or provided incomplete or inaccurate information, and penalties could soon be on the way. The interim final rule period has ended, and now it is more important than ever for importers to take the necessary steps to make sure they are complying with not only filing the ISF, but making sure it is filed on time.

ISF And Pacific Customs Brokers:

Pacific Customs Brokers would like to advise Importers of Record that we can handle these filings for you with our **Import Security Filing Services** and also offer **Ocean Clearances**. To find out how your business may be affected in the coming year and how we may be able to assist you, contact **Pacific Customs Brokers**.

Ocean Shipments And Importer Security Filing

Are you wanting to **begin importing** into the U.S.?

GET A QUOTE 

Start by speaking to an Import Specialist to understand the process and pricing.

About Author

Breanna Leininger

CCS, LCB

Vice President, US Operations *Pacific Customs Brokers Inc.*

Breanna has been in the industry since 2004 and has dealt with clearances and compliance concerns for a multitude of commodities for all ports of entry and all modes of transportation. She has a Bachelors in Communications, Bachelors in Political Science & Government, is a Licensed Customs Broker as well as Certified Customs Specialist. Breanna has been asked to be the speaker in a variety of events including the BC Agriculture Show, Doing Business in the US seminar and has been a contributor to Small Business BC publications. She was recently nominated for the NCBFAA Government Affairs Conference Emerging Leaders and Mentors by the NBCBA. She participates in the Northern Border Customs Brokers Association and the NCBFAA annual conferences in Washington, DC. Breanna has a deep passion for politics, global affairs, and how communication shapes policy and international business relationships. She feels very fortunate to work in an industry that allows her to take part in how policy impacts the global economy and domestic businesses of all shapes and sizes.

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While we strive for accuracy in all our communications, as the Importer of Record it is incumbent upon your company to ensure that you are aware of the requirements under the new regulations so that you maintain compliance as always.

Ted Murphy

International Trade Updates

CATEGORY ARCHIVES: ISF

Increased ISF Enforcement on the Horizon

Posted on [June 18, 2013](#)

Dear Friends:

Just a quick note to let you know that US Customs and Border Protection recently announced that it is “making preparations to enter into the liquidated damages phase of the Importer Security Filing (ISF) enforcement process.”

In a June 7, 2013 posting to its website, CBP announced that it will begin assessing liquidated damages for ISF violations as of July 9, 2013. Liquidated damages of up to \$5,000 per violation will be assessed for incomplete, inaccurate or untimely filings. Also, if the ISF has not been filed at the time of arrival, CBP can (in addition to imposing penalties) withhold the release or transfer of the cargo. CBP’s posting can be found [here](#).

Given that ISF has been in effect since January 2009, importers should expect CBP to be pretty aggressive in pursuing violations and imposing liquidated damages beginning July 9, 2013. Accordingly, if your ISF program needs a tune-up, now is the time to do it.

If you have any questions, or if you would like to discuss ISF further, please let us know.

Best regards,

Ted

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**YUSEN...***We have a problem!***10 + 2 - \$5,000***Mark Kopp, Yusen Logistics (Americas) Inc.*

The news this week revolves around the announcement from Customs and Border Protection (CBP) that full enforcement of Importer Security Filings (ISF) will go into effect on July 9th.

In order to meet the Security and Accountability (SAFE) Port Act of 2006, CBP began requiring importers and carriers to submit information 24 hours before lading of a vessel in order to prevent smuggling and ensure cargo safety.

The ruling requires importers to file ten data elements and the carriers to file two data elements. The ruling was published on November 26, 2008. At that time CBP announced that untimely or inaccurate filings could be subject to a \$5,000 fine. CBP began accepting filings on January 26, 2009. They allowed a one year grace period for the industry to put in the necessary procedures to implement the ruling. As things go in Washington, the grace period was extended.

By now all importers should be familiar with the rules and requirements of ISF and have their programs and procedures fully implemented. Therefore, there should be no need to go into the details of the data element required.

But that's the old news. On Friday June 7th, CBP issued CSMS #13-00298 stating, *"On July 9, 2013 CBP will begin full enforcement of ISF, and will start issuing liquidated damages against ISF importers and carriers for ISF non-compliance."*

What Can You Do?

Be proactive. Check with your customs broker or ISF filer if you do not file on your own. Make sure you understand where you are having existing issues with late or inaccurate filings and what you can do to correct them.

Additionally, monitor your ISF filings through your ACE portal. If you do not have one you can obtain an application from the [CBP website](#) at Home >> Trade >> Automated and Operational Systems/ACE: Modernization Information Systems or for questions, write to ACE.Support@cbp.dhs.gov; the service is free to all importers.

You should also monitor the status codes provided by CBP for your shipments. Remember that along with the "10+2" data elements, both the importer and carrier must supply a bill of lading number. This is the number CBP is using to match the importer ISF and carrier AMS filings and to determine timeliness of filings. CBP considers unmatched files as a non-filing. The status codes are as follows:

- S1 – Status when AMS bill and ISF match
- S2 – Status when AMS bill and ISF do not match at time of filing
- S3 – Status when AMS bill and ISF do not match 5 days after ISF is accepted
- S4 – Status when AMS bill and ISF do not match 20 days after ISF is accepted
- S5 – Status when AMS bill and ISF do not match 30 days after ISF is accepted

Pay particular attention to any S3 status. Check with your carrier to determine if you have submitted the correct bill of lading number. It is possible the carrier may not have submitted the bill of lading number to AMS but it is in your best interest to find out. By the time a filing reaches S4 or S5 it may be too late to make any changes and CBP could consider this a non-filing.

CBP remains vague as to what constitutes an inaccurate filing. Filers are required to "submit information on the basis of what it reasonably believes to be true." The original ruling allowed for amendments to be made before vessel arrival if more accurate information became available; for example, a change in the bill of lading number or a conflict between house and master bills. At this point it is not known if an amended filing will be considered to have been inaccurate and therefore trigger a fine. Check with your broker or filer for clarification on this point as more information from CBP becomes available.

As far as can be determined, all fines and penalties will be reviewed by Washington before claims for liquidated damages are assessed. First violations could be reduced to between \$1,000 and \$2,000 depending on mitigating or aggravating factors. Subsequent violations could be reduced to \$2,500 provided CBP determines that law enforcement goals were not compromised by the violation. No relief will be granted if CBP determines that law enforcement goals were compromised

by the violation. We reasonably believe the fine will be capped at \$10,000 per ISF.

More information can be obtained by reviewing the FAQ's on the [CBP website](#) at Home >> Trade >> Cargo Security.

How Serious Is CBP?

While we can be confident that CBP will enforce this ruling, full enforcement could potentially be a serious impediment to the importing community and carriers. Looking at some hypothetical numbers, in 2012, CBP processed approximately 30 million entries. Let's assume only 10% of these are subject to ISF filing. Let's further assume only 1% of these would be subject to liquidated damages for ISF violations. That's 30,000 entries at \$5,000 dollars each, meaning CBP stands to collect \$150 million dollars in the next year.

How Serious Are You?

How many ISF filings does your company make each year? Assume 1% of that number and multiply by \$5,000. Can you afford to add that amount to your cost of doing business? Obviously not. Therefore you need to be as proactive as possible between to ensure you are doing all you can to make sure your ISF filings are timely and accurate.

Mark Kopp is currently the Senior Manager for Import Compliance for Yusen Logistics (Americas) Inc. Mark has over 30 years experience in all aspects of supply chain management and compliance – from product development and buying, cargo management and shipping, customs brokerage, to warehousing, distribution and retail sales. He has managed/directed imports for Kinney Shoe Corporation, Woolworth Corporation, Russ Berrie & Co. and DHL. He has also served on the Footwear Distributors & Retailers of America government customs council, been a member of the Board of Directors for the Toy Shippers Association, and been an instructor at The World Trade Institute in New York. Currently, he is a member of the NY/NJ Freight Forwarders & Brokers Association and serves on the American Apparel & Footwear Association Government Relations Committee. Mark graduated from Franklin & Marshall College in Lancaster, PA with a B.A. in Political Science.

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Customs Advance Manifest



Start date of Liquidated Damage Charges for ISF Non-Compliance announced

Please note US Customs and Border Patrol (CBP) has announced effective July 9, 2013 they will begin full enforcement of Importer Security Filing (ISF or 10+2). The full enforcement will include CBP issuing liquidated damages for ISF(10+2) non-compliance against importers and carriers.

Please visit the CBP website for more information. The CBP announcement can be found at the following link.

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Publication of Final Rule on ISF

January 16, 2013

Dear Valued Customer,

According to a Broker Power article on CBP's regulatory Agenda, the Final Rule on ISF is expected in February of 2013.

CBP has indicated that ACE deployment for AMS and publication of the Final Rule needed to be in place before CBP could proceed with full enforcement of ISF and begin assessment of liquidated damages. With the Final Rule scheduled to be published in February 2013, liquidated damages for ISF could be on the near horizon. Through our involvement with the NCBFAA ISF Sub-committee, CBP continues to stress that there will be a CSMS message to the trade at least 30 days prior to full enforcement of ISF. CBP indicates enforcement efforts will focus initially on non-filers with repetitive and negligent errors.

If you have any questions please contact us at 305-471-8989.

Thank you for your continued support,

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Industry News

Update: CBP to Begin Full ISF Enforcement Next Week

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July 02, 2013

On **Tuesday, July 09, 2013**, CBP will begin full enforcement of its Import Security Filer Program (ISF). According to last month's [announcement](#), CBP will start issuing damages against noncompliance at that time.

For more information, please contact a Barnes/Richardson attorney or continue to visit www.barnesrichardson.com.

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Publication of Final Rule on ISF

Posted on January 10, 2013 by tfli.com

According to a Broker Power article on CBP's regulatory agenda, the Final Rule on ISF is expected in February of 2013. CBP has indicated that ACE deployment for AMS and publication of the Final Rule needed to be in place before CBP could proceed with full enforcement of ISF and begin assessment of liquidated damages. With the Final Rule scheduled to be published in February 2013, liquidated damages for ISF could be on the near horizon. Through our involvement with the NCBFAA ISF Sub-committee, CBP continues to stress that there will be a CSMS message to the trade at least 30 days prior to full enforcement of ISF.

CBP indicates enforcement efforts will focus initially on non-filers with repetitive and negligent errors.

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